

Message Text

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ACTION EUR-12

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COME-00 EB-07 EA-09 FRB-01 INR-07 NEA-10 NSAE-00

OPIC-06 SP-02 TRSE-00 CIEP-02 LAB-04 SIL-01 OMB-01

L-03 JUSE-00 FTC-01 STR-04 SS-15 NSC-05 TAR-01 PA-02

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TO SECSTATE WASHDC 9869
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UNCLAS SECTION 1 OF 2 OECD PARIS 33325

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SUBJECT: MEETING OF OECD RESTRICTIVE BUSINESS PRACTICES
(RBP) COMMITTEE AND WORKING PARTIES, DECEMBER
15-19, 1975

1. SUMMARY: WP-11 ON MNE'S REDRAFTED DECEMBER 15-16
RBP GUIDELINES SUBSTANTIALLY ALONG LINES RECOMMENDED IN
NOVEMBER 24 U.S. PROPOSAL. DELEGATIONS OF AUSTRALIA,
NETHERLANDS AND SWITZERLAND BRACKETED PARA 3 CONCERNING
"COMPETITIVELY IMPORTANT AFFILIATES." WHILE RESERVA-
TIONS TO THIS PARAGRAPH IN LINE WITH U.S.
POLICY, U.S. DEL DID NOT REPEAT NOT RESERVE POSITION IN
LIGHT OF ACTION OF OTHER DELEGATIONS. U.S. DEL ALSO
SUCCESSFULLY REITERATED IN WORKING PARTY REPORT PREVI-
OUSLY EXPRESSED RESERVATIONS ON UTILITY OF RBP GUIDE-
LINES. GUIDELINES DISCUSSED IN FUL COMMITTEE DECEMBER
18 AND APPROVED WITH BRACKETED RESERVATIONS FOR REFERRAL
TO IME COMMITTEE. WP-11 REPORT WAS DISCUSSED DECEMBER
16. DISCUSSION WILL BE RESUMED AT NEXT MEETING
IN FEBRUARY. WP-3 DISCUSSED AND APPROVED AMICI CURIAE
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REPORT DECEMBER 16. FULL COMMITTEE APPROVED COLLUSIVE

TENDERING AND AMICI CURIAE REPORTS AND READ JAPANESE
PAPER AND COUNTRY REPORTS DECEMBER 18 AND 19 AND AGREED
NEXT PLENARY SESSION WOULD BE JUNE 28-JULY 2, 1976.
FRENCH PROPOSED UNIVERSITY SEMINAR AT NEXT SESSION.
GROUP B CAUCUS IN PREPARATION FOR UNCTAD GROUP OF EXPERTS
ON RBP MEETING IN FEBRUARY 1976 ALSO MET DECEMBER 19.

2. WP-11 ON MULTINATIONAL ENTERPRISES MET DECEMBER 15-
16. ONE AND A HALF DAYS WERE SPENT REDRAFTING RBP
GUIDELINES FOR MNE'S. U.S. DEL WAS SUCCESSFUL IN HAVING
MOST POINTS OF U.S. PROPOSAL MADE IN IME COMMITTEE
ADOPTED WITH ONLY MINOR VARIATIONS. U.S. DEL TO IME
EXPRESSED ITS SATISFACTION WITH REVISED DOCUMENT. FULL
TEXT OF GUIDELINES AS REVISED, INCLUDING SUBSEQUENT
REVISIONS IN FULL COMMITTEE, FOLLOWS: BEGIN TEXT

GUIDELINES ON RESTRICTIVE PRACTICES AND
COMPETITION FOR MULTINATIONAL ENTERPRISES

ENTERPRISES SHOULD,

WHILE CONFORMING TO OFFICIAL COMPETITION RULES AND
ESTABLISHED POLICIES OF THE COUNTRIES IN WHICH THEY
OPERATE,

(1) REFRAIN FROM ACTIONS WHICH WOULD ADVERSELY
AFFECT COMPETITION IN THE RELEVANT MARKET BY
ABUSING A DOMINANT POSITION OF MARKET POWER,
BY MEANS OF, FOR EXAMPLE,

(A) ANTI-COMPETITIVE ACQUISITIONS,
(B) PREDATORY BEHAVIOUR TOWARD COMPETITORS,
(D) ANTI-COMPETITIVE ABUSE OF INDUSTRIAL
PROPERTY RIGHTS;

(2) REFRAIN FROM DISCRIMINATORY (I.E. UNREASONABLY
DIFFERENTIATED) PRICING FOR GOODS AND SERVICES
WHICH ADVERSELY AFFECTS COMPETITION AND FROM
USING SUCH PRICING TRANSACTIONS BETWEEN AFFILIATED
ENTERPRISES AS A MEANS OF AFFECTING ADVERSELY
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COMPETITION OUTSIDE THESE ENTERPRISES;

(3) ALLOW PURCHASERS, DISTRIBUTORS, LICENSEES (AND,
WHEN COMPETITIVELY IMPORTANT, CONTROLLED
AFFILIATES) FREEDOM TO RESELL, EXPORT, PURCHASE
AND DEVELOP THEIR OPERATIONS CONSISTENT WITH
LAW, TRADE CONDITIONS, THE NEED FOR SPECIALISA-
TION AND SOUND COMMERCIAL PRACTICE;

(4) REFRAIN FROM PARTICIPATING IN OUR CO-OPERATING
WITH INTERNATIONAL OR DOMESTIC CARTELS OR
RESTRICTIVE AGREEMENTS WHICH ADVERSELY AFFECT OR
ELIMINATE COMPETITION AND WHICH ARE NOT GENERALLY
OR SPECIFICALLY ACCEPTED UNDER APPLICABLE
NATIONAL OR INTERNATIONAL LEGISLATION;

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(5) BE READY TO CONSULT AND CO-OPERATE WITH AND PRO-
VIDE RELEVANT INFORMATION IN REGARD TO COMPETI-
TION ISSUES OR INVESTIGATIONS TO COMPETENT
AUTHORITIES OF COUNTRIES WHOSE INTERESTS ARE
DIRECTLY AFFECTED, PROVIDED SUCH INFORMATION IS
NOT LEGALLY PRIVILEGED OR ITS DISCLOSURE IS
NOT OFFICIALLY PROHIBITED. END TEXT

3. BRACKETED LANGUAGE IN GUIDELINE 3 WAS OBJECTED TO BY
AUSTRALIAN, NETHERLANDS AND SWISS DELEGATIONS. U.S.
DEL, IN VIEW OF OTHER DELEGATIONS OBJECTIONS, FELT NO
NEED TO JOIN IN RESERVATIONS. GUIDELINE 5 WAS AMENDED
BY RBP COMMITTEE ON DECEMBER 18 TO EXPAND DESCRIPTION
OF INFORMATION NOT REQUIRED TO BE FURNISHED.

4. U.S. DEL INSISTED ON RESTORATION IN RBP WORKING PARTY REPORT OF RESERVATIONS PREVIOUSLY MADE RE UTILITY OF GUIDELINES IN RBP AREA AND DIFFICULTIES OF INTERPRETATION OF GUIDELINES GENERALLY, HOLDING OPEN POSSIBILITY OF REJECTION OF GUIDELINE CONCEPT IN FINAL REPORT. WORKING PARTY UNANIMOUSLY APPROVED THIS REITERATION OF UNCLASSIFIED

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RESERVATIONS..

5. ONE-HALF DAY WAS SPENT EDITING ECONOMIC AND LEGAL CHAPTERS OF FINAL REPORT OF WP-11. ONLY HALF OF LEGAL CHAPTER EDITING WAS ACCOMPLISHED AND MEMBERS WERE ASKED TO SEND WRITTEN COMMENTS BY JANUARY 9, 1976. ECONOMIC CHAPTER EDITING WAS COMPLETED SUBJECT TO FURTHER REVISIONS. NEXT MEETING WAS SET FOR FEBRUARY 12 AND 13, 1976, IN VIEW OF UNCTAD GROUP OF EXPERTS ON RBP MEETING SCHEDULED TO COMMENCE FEBRUARY 16, 1976.

6. NEXT MEETING OF WP-7 ON TRADEMARKS WAS ALSO AGREED FOR FEBRUARY 11, 1976.

7. WP-3 MET DECEMBER 17, 1975. TEXT ON POSSIBILITIES OF PARTICIPATION BY GOVERNMENTS AS AMICI CURIAE IN ANTI-TRUST PROCEEDINGS WAS APPROVED WITH MINOR AMENDMENTS. SUMMARIES OF REPORTS ON NOTIFICATIONS WERE GIVEN. NEXT MEETING WAS TENTATIVELY SCHEDULED FOR WEEK OF JUNE 28, 1976.

8. RBP COMMITTEE MET IN PLENARY SESSION DECEMBER 18-19, 1975. FIRST PART OF MORNING OF DECEMBER 18 WAS SPENT CONSIDERING REPORT OF WP-11 ON RBP GUIDELINES AND APPROVING TEXT, WITH RESERVATIONS AS TO BREACKETED LANGUAGE, FOR TRANSMITTAL TO COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES (IME).

9. DURING REMAINDER OF DECEMBER 18, COMMITTEE APPROVED AND RECOMMENDED FOR DERESTRICTION, WITH SLIGHT AMENDMENTS, REPORT OF WP-12 ON COLLUSIVE TENDERING AND REPORT OF WP-3 ON POSSIBILITIES OF PARTICIPATION BY GOVERNMENTS AS AMICI CURIAE IN ANTITRUST PROCEEDINGS. JAPANESE DELEGATION GAVE STATISTICAL REPORT ON INDUSTRIAL CONCENTRATION IN JAPAN. ANNUAL REPORTS OF DEVELOPMENTS IN RESTRICTIVE BUSINESS PRACTICES IN MEMBER COUNTRIES WERE COMMENCED.

10. COMMITTEE MEETING CONTINUED ON DECEMBER 19 WITH CONCLUSION OF ANNUAL REPORTS ON DEVELOPMENTS AND A REPORT BY SECRETARIAT ON ACTIVITIES IN UNCTAD REGARDING

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RBP MATTERS. NEXT MEETING WAS TENTATIVELY SCHEDULED FOR WEEK OF JUNE 28, 1976, WITH EXACT DATES TO BE GIVEN LATER.

11. FRENCH DELEGATION ANNOUNCED A SEMINAR ON RBP TO BE HELD FOR TWO DAYS IN PARIS AT ABOUT THE SAME TIME AS THE NEXT COMMITTEE MEETING. THE SEMINAR WILL BE SPONSORED BY THE FRENCH NATIONAL BUSINESS SCHOOL, AND GOF IS EXPECTED TO REQUEST OECD FORMAL RECOGNITION FOR IT. ALL MEMBER DELEGATES WERE INVITED TO SEND REPRESENTATIVES. WRITTEN MATERIALS WILL NOT BE AVAILABLE FOR SEVERAL WEEKS. U.S., U.K., EEC AND FRG ANTITRUST EXPERIENCE WILL BE MAJOR FOCUS OF SEMINAR.

12. INFORMAL GROUP B CAUCUS CALLED BY U.K. (GRIBBON) MORNING DECEMBER 19 AMONG PARTICIPANTS IN UNCTAD EXPERTS COMMITTEE TO MEET IN GENEVA IN FEBRUARY. U.S. WILL PREPARE DRAFT GROUP B POSITION PAPER ON ANTITRUST PRINCIPLES IN ADVANCE OF NEXT OECD MEETING FOR CIRCULATION TO GROUP B CAUCUS AT THAT TIME. U.S. TO CONSULT WITH GERMANY AND SWITZERLAND AND ANY OTHER INTERESTED PARTICIPANTS IN ITS PREPARATION. U.K. TO PREPARE SIMILAR DRAFT PAPER ON CONSULTATION. CANADA TO DRAFT PAPER ON MODEL ANTITRUST LAW. CAUCUS AGREED TO MEET AGAIN ON FEBRUARY 11, 1976 AT OECD, FOLLOWING MEETING OF WP-11 OF RBP COMMITTEE ON SAME DATE. OECD SECRETARIAT OFFERED SUPPORT IN TRANSLATION FACILITIES FOR MEETING AND REPRODUCTION AND CIRCULATION OF DRAFT PAPERS. KATZ

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